

Calendar No. 197

109TH CONGRESS }
1st Session }

SENATE

{ REPORT
109-126

CAPTIVE WILDLIFE SAFETY TECHNICAL AMENDMENT ACT OF 2005

AUGUST 31, 2005.—Ordered to be printed

Filed, under authority of the order of the Senate of July 29, 2005

Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

[To accompany S. 1415]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1415) to amend the Lacey Act Amendments of 1981 to protect captive wildlife and make technical corrections, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

In the early 1900's, Congress recognized the need to support States in protecting their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws. Today this legislation is known as the Lacey Act, named for its principal sponsor, U.S. Representative John Fletcher Lacey, R-Iowa. Most significantly amended in 1981, the Lacey Act makes it unlawful to import, export, transport, sell, buy, or possess fish, wildlife, or plants taken, possessed, transported, or sold in violation of any Federal, State, foreign or Native American tribal law, treaty, or regulation. The Act covers all fish and wildlife and their parts or products and plants under the Conventions on International Trade in Endangered Species of Wild Fauna and Flora, which makes trafficking in illegally acquired wildlife a Federal crime.

However, until the enactment of the Captive Wildlife Safety Act in 2004, the Lacey Act did not explicitly address the problem of the increasing trade in large exotic cat species.

The ownership of large cat species has dramatically increased in popularity. It is estimated that thousands of large cat species are kept as pets in the United States. This increase is due, in part, to Internet sales and auctions. This increase in popularity has raised concerns regarding the public safety as well as the welfare of the big cats.

As the cats are often purchased when young, many owners are ill equipped for the high maintenance of the mature cats. Too often, the owners lack the resources and veterinary knowledge these grown cats entail. In the hands of untrained exotic-pet fanciers or roadside zoo owners, large cats are not only a danger to people but are victims themselves. Additionally, often the burden of care goes to already strained sanctuary and humane societies after the cats are abandoned because they are too dangerous or too expensive. Over the past 10 years, there have been thousands of incidents of injury and death documented involving many different wild animals.

OBJECTIVES OF THE LEGISLATION

S. 1415 makes technical corrections to the Lacey Act Amendments of 1981 and the Captive Wildlife Safety Act (CWSA) in order to ensure that the CWSA provisions found in 16 U.S.C 3372 are fully enforceable. During development of the regulations to implement the CWSA, the U.S. Fish and Wildlife Service (Service) realized that enforcement of the CWSA would be difficult because of the provision's location within the Lacey Act Amendments of 1981. Specifically, the Lacey Act criminal wildlife trafficking prohibitions are built upon a two-step prohibition scheme. Each trafficking violation requires proof of two separate steps involving wildlife at issue. First, the wildlife must be taken, possessed, transported or sold by someone in violation of existing laws or treaties. Second, the wildlife must then be subsequently imported, exported, transported, sold, received, acquired or purchased. These two steps cannot be collapsed into one step or act committed by the defendant. As presently written, the two-step process for violations of the CWSA is difficult to enforce. Therefore, based on the recommendations of the Service and the Department of Justice, this Act moves the CWSA provisions to another part of the Lacey Act to allow the CWSA to be fully enforceable.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

This section provides that this Act may be cited as the "Captive Wildlife Safety Technical Amendment Act of 2005."

Sec. 2. Captive Wildlife Amendments.

This section makes technical corrections to section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372 and 3373(d)).

Sec. 3. Applicability Provision Amendment.

This section makes technical corrections to section 3 of the Captive Wildlife Safety Act (117 Stat. 2871; Public Law 108–191).

LEGISLATIVE HISTORY

On July 18, 2005, Senator James M. Inhofe introduced S. 1415, which was cosponsored by Senator James Jeffords and Senator Lincoln Chafee. The bill was referred to the Senate Committee on Environment and Public Works. On July 20, 2005, the full committee held a business meeting and unanimously ordered S. 1415 to be favorably reported without amendment to the full Senate.

HEARINGS

No committee hearings were held on S. 1415.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1415 on July 20, 2005. The committee approved S. 1415 by unanimous consent.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1415 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 1415 would not impose Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

*S. 1415, Captive Wildlife Safety Technical Amendment Act of 2005,
As ordered reported by the Senate Committee on Environment
and Public Works on July 20, 2005*

S. 1415 would amend the enforcement authorities used by the U.S. Fish and Wildlife Service to prohibit sales and other transactions involving certain protected wildlife species. Based on information provided by that agency, CBO estimates that enacting this legislation would have no significant effect on the Federal budget. Amending the enforcement mechanisms for existing legal prohibitions may result in additional Federal revenues from criminal penalties, but we estimate that any amounts that would be collected (and any corresponding direct spending of such amounts from the Crime Victims Fund) would be minimal and largely offsetting.

S. 1415 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

LACEY ACT AMENDMENTS OF 1981

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SEC. 3. PROHIBITED ACTS.

(a) OFFENSES OTHER THAN MARKING OFFENSES.—It is unlawful for any person—

(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law; *or*

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State[; *or*];

[(C) any prohibited wildlife species (subject to subsection (e));]

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code)—

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, *or*

(B) to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; *or*

(4) to attempt to commit any act described in paragraphs (1) through (3) *or subsection (e)*.

* * * * *

[(e) NONAPPLICABILITY OF PROHIBITED WILDLIFE SPECIES OFFENSE.—

(1) IN GENERAL.—Subsection (a)(2)(C)]

(e) CAPTIVE WILDLIFE OFFENSE.—

(1) IN GENERAL.—*It is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any live animal of any prohibited wildlife species.*

(2) *NONAPPLICABILITY.*—*This subsection does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of [a] any prohibited wildlife species, by a person that, under regulations prescribed under paragraph [(3)] (4), is described in paragraph (2) with respect to that species.*

[(2)] (3) *PERSONS DESCRIBED.*—A person is described in this paragraph, if the person—

(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

(i) is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such Code;

(ii) does not commercially trade in [animals listed in section 2(g)] *prohibited wildlife species*, including offspring, parts, and byproducts of such animals;

(iii) does not propagate [animals listed in section 2(g)] *prohibited wildlife species*; and

(iv) does not allow direct contact between the public and [animals] *prohibited wildlife species*; or

(D) has custody of the [animal] *prohibited wildlife species* solely for the purpose of expeditiously transporting the [animal] *prohibited wildlife species* to a person described in this paragraph with respect to the species.

[(3)] (4) *REGULATIONS.*—Not later than 180 days after the date of enactment of this subsection, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in paragraph [(2)] (3).

[(4)] (5) *STATE AUTHORITY.*—Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

[(5)] (6) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out [subsection (a)(2)(C)] *this subsection* \$3,000,000 for each of fiscal years 2004 through 2008.

(7) *APPLICATION.*—*This subsection shall apply beginning on the effective date of regulations promulgated under this subsection.*

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SEC. 4. PENALTIES AND SANCTIONS.

(a) * * *

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(d) *CRIMINAL PENALTIES.*—

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act (other

than **subsection 3(b)** *subsections (b), (d), and (e) of section 3*), or

(B) violates any provision of this Act (other than **subsection 3(b)** *subsections (b), (d), and (e) of section 3*) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350,

knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act (other than **subsection 3(b)** *subsections (b), (d), and (e) of section 3*) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates **section 3(d)** *subsections (d) and (e) of section 3*—

(A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, if the offense involves—

(i) the importation or exportation of fish or wildlife or plants; or

(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than \$350; and

(B) shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A).

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[117 STAT. 2871; PUBLIC LAW 109–191]

CAPTIVE WILDLIFE SAFETY ACT

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SEC. 3. PROHIBITED ACTS.

【(a) IN GENERAL.—Section 3】 *Section 3* of the Lacey Act Amendments of 1981 (16 U.S.C. 3372) is amended—

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【(b) APPLICATION.—Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 (as added by subsection (a)(1)(A)(iii)) shall apply beginning on the effective date of regulations promulgated under section 3(e)(3) of that Act (as added by subsection (a)(2)).】

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